

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

WILLIE STRONG,

Petitioner,

v.

9:20-CV-1183
(DNH/TWD)

SCOTT FINLEY,

Respondent.

APPEARANCES:

OF COUNSEL:

WILLIE STRONG

Petitioner pro se

21484-052

Schuylkill Federal Correctional Institute

P.O. Box 759

Minersville, PA 17954

DAVID N. HURD

United States District Judge

DECISION and ORDER

Pro se petitioner Willie Strong ("Strong" or "petitioner") sought federal habeas relief pursuant to 28 U.S.C. § 2254. Dkt. No. 1, Petition ("Pet."). On October 30, 2020, the Court ordered that the petition be stayed and that petitioner advise the Court, in writing, that he had commenced a 440 action in state court. Dkt. No. 5, Decision and Order ("October Order"). Petitioner was directed to attach proof. *Id.*

Thereafter, Strong sought and received several extensions of time to comply with the October Order. Dkt. No. 6, Letter Motion; Dkt. No. 7, Text Order; Dkt. No. 10, Letter Motion; Dkt. No. 11. Recently, the Court received a letter request from petitioner asking for either "a withdrawal of [his petition] . . . without prejudice, or a six month extension to perfect said 440

motion before filing it." Dkt. No. 12.

On February 5, 2021, this Court issued an order explaining that, at this point, a voluntary withdrawal may result in any subsequently filed petitions being barred by the statute of limitations and granting petitioner thirty days leave to clarify his intentions. Dkt. No. 14, Decision and Order ("February Order").

Strong timely complied with the February Order and filed a letter which renewed his voluntary request to withdraw his petition. Dkt. No. 15 at 1. Petitioner also requested that his filing fee be "put on hold until petitioner [re-]files [his habeas petition.]" *Id.* Petitioner believes that the subject matter of his 440 motion will "prove[] petitioner's innocence;" thus, to the extent petitioner needs to re-file his habeas petition, any such petition will be supported by "actual innocence" arguments sufficient to overcome any potential statute of limitations problems. *Id.* at 1-2. Accordingly, petitioner's motion to voluntarily withdraw his petition is granted. However, petitioner's request to re-use his filing fee for a second action is denied.

WHEREFORE, it is

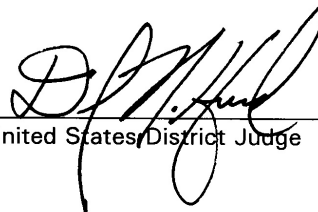
ORDERED that petitioner's motion to withdraw (Dkt. No. 15) is **GRANTED** and the petition is **DISMISSED WITHOUT PREJUDICE**; and it is further

ORDERED that petitioner's request to reserve his filing fee for a subsequently filed action is **DENIED**; and it is further

ORDERED that the Clerk serve copies of this Decision and Order upon petitioner in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: March 8, 2021
Utica, New York.


United States District Judge